

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

v.

TYSON FOODS, INC., et al.,

Defendants.

Case No. 05-cv-329-GKF(SAJ)

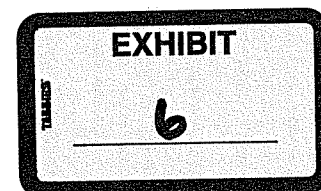
DECLARATION OF EUGENE B. WELCH, PH.D.

I, Eugene B. Welch, Ph.D., state the following:

1. The Defendants' claims regarding G.D. Cooke's and my Report in their Joint Motion to Enforce Scheduling Orders In Light of Plaintiffs' Expert Disclosures Abuses (September, 15 2008) are exaggerated and sometimes false.

2. The Errata submitted by me (July 24, 2008 and August 13, 2008) were submitted to clarify misstatements in the text (7/24/08), correct placement of references cited (7/24/08) and to supply data left out of the Report's Appendix – the same data that were included in figures in the text, but was inadvertently omitted from the Appendix of the Report (8/13/08).

3. My errata were not intended to "bolster" my opinion by "asserting new and altered information." My analysis, conclusions and opinions are the same. The errata were prepared to correct inadvertent errors and omissions.



4. Except for several paragraphs discussed below concerning observed phosphorous concentrations and scenic river water quality standards no one (including Dr. Jack Jones or any of the CDM personnel) other than Dr. Cooke and me, drafted or edited portions of our Report. An example cited by Defendants of Dr. Jones "writing" our Report relates to Figures 7.1 and 7.2 of the Report. Per our discussions, Dr. Jones simply took our data and plotted it producing these Figures. He did not draft or edit any of the Report.

5. CDM personnel also performed calculations, gathered data used for figures and tables and prepared figures and tables used in our Report. They gathered the data and constructed figures and tables per our (Dr. Cooke and my) request, direction and control. They neither drafted nor edited portions of the text. The sole exception is the 5 paragraphs on pages 39 and 40 of our Report that discuss phosphorous water quality data and Oklahoma's Scenic River water quality standard for aesthetics. Two individuals (named in the text) not only performed the calculations discussed in those paragraphs they also prepared the first draft of the 5 paragraphs of the text which I edited. I am familiar with and have published peer reviewed scientific papers concerning phosphorous concentrations in rivers and streams and its impact on water quality. I

did not say in my deposition that I did not understand this type of analysis (i.e. comparing observed phosphorous concentrations with water quality standards). I explained in my deposition that I was reluctant to testify in detail because I had not checked their calculations. The fact that I had not checked their math should not be interpreted that I am not familiar with this procedure or that I am not able to testify concerning it.

6. Dr. Cooke and I were diligent in carefully reviewing raw water quality data and calculations that went into the Figures and Tables in the text. Another example of a Defendants' claim of "undisclosed" writers of our Report concerns the work performed for me by Dr. Tony Gendusa. Dr. Gendusa collected fish catch data from State of Oklahoma Fisheries personnel and provided me with that information (which was supplied to the Defendants). Dr. Gendusa did not write any of our Report. His task was to gather information at my direction and then he created figures and a table per our discussions. For example, he created Figure 37 in our Report (see attached) from the State of Oklahoma fisheries data he collected. He also obtained the State's fisheries biologist's opinion of the criterion of a quality fishery and these data and information were put on the Figure. I used this information to compare the relative sport fisheries of Lake

Tenkiller and Broken Bow Lake as part of my analysis of the effect of phosphorous on Lake Tenkiller.


7. Having competent scientists conduct computations and construct illustrations for a report produced and authored by another scientist is customary practice in research and scientific reporting. This is an acceptable procedure so long as those activities were supervised - which they were for all of the Figures and Tables in our Report. During this project the people who performed these activities were doing so pursuant to our direct requests, direction and control. It is also customary for scientists in my field to rely on data collected by other qualified scientists for use in scientific reports.

9. Defendants also complain about a statistical analysis performed by Mr. King and Dr. Jim Loftis. As I explained in my deposition, a second statistical analysis was performed Mr. King after my Report was completed and the Statistical analysis performed by Dr. Loftis was also performed after I completed my Report. I had this analysis done because I wanted to confirm the statistical analysis in the Report. The discussion of this work was prompted by counsel's questions during my deposition.

10. Thus, the claim that part of our Report was "ghost written" is absolutely false. Dr. Cooke and I wrote every word of text in our Report (except the 5 paragraphs referred to above whose authors were identified in the text) and we are responsible for the analysis, conclusions and opinions stated in the Report.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed on the 19th day of September, 2008.


Eugene B. Welch, Ph.D.